

AMENDED IN SENATE AUGUST 22, 2011

AMENDED IN SENATE JUNE 16, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 353

Introduced by Assembly Member ~~Cedillo~~ Members *Cedillo and Allen*

February 10, 2011

An act to amend Section 2814.1 of, and to add Sections 2814.2 and 14602 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 353, as amended, Cedillo. Vehicles: checkpoints.

(1) Existing law authorizes the board of supervisors of a county to establish, by ordinance, a combined vehicle inspection and sobriety checkpoint program to check for violations of motor vehicle exhaust standards and driving-under-the-influence (DUI) offenses.

Existing law authorizes a peace officer, whenever the peace officer determines, among other things, that a person was driving a vehicle without ever having been issued a driver's license, to immediately arrest that person and cause the removal and seizure of his or her vehicle for an impoundment period of 30 days, or, if the person is currently without a valid driver's license, to remove the vehicle for a shorter period of time upon issuance of a notice to appear if the registered owner or the registered owner's agent presents a currently valid driver's license and proof of current vehicle registration, or upon order of the court.

~~This bill would authorize the Department of the California Highway Patrol, and a city, county, and city and county, by ordinance or resolution, to establish a sobriety checkpoint program on highways~~

~~within their respective jurisdictions to identify drivers who are in violation of specified DUI offenses. The bill would require that the program be conducted by the local governmental agency or department with the primary responsibility for traffic law enforcement.~~

This bill would require the driver of a motor vehicle to stop and submit to a sobriety checkpoint inspection conducted by a law enforcement agency when signs and displays are posted requiring that stop.

The bill would, notwithstanding other provisions of law, require that a peace officer or any other authorized person not cause the impoundment of a vehicle at a sobriety checkpoint, established pursuant to these provisions or any other law, ~~unless at least one of a number of specified conditions applies if the driver's only offense is, among other offenses, the failure to hold a valid driver's license.~~ The bill would ~~delete the authority of the county board of supervisors to conduct a combined vehicle inspection and sobriety checkpoint program~~ *require, during the conduct of a sobriety checkpoint, a law enforcement officer to make a reasonable attempt to identify the registered owner of the vehicle in order to release the vehicle to the registered owner if he or she is a licensed driver or to a licensed driver authorized by the registered owner. The bill would require that if a notice to appear is issued, the name and driver's license number of the licensed driver to whom the vehicle was released be listed on the officer's copy of the notice to appear issued to the unlicensed driver and would require if a vehicle cannot be released, that the vehicle be removed, as specified.*

(2) Existing law authorizes a peace officer to either immediately arrest a person and cause the removal and seizure of the vehicle he or she was operating or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle, without the necessity of arresting the person, if the peace officer determines that the person was driving the vehicle while his or her driving privilege was suspended or revoked or without having been issued a license.

Existing law subjects a vehicle to forfeiture as a nuisance if it is driven on a highway by a driver with a suspended or revoked license, or by an unlicensed driver, as specified. Existing law requires a vehicle to be impounded for at least 30 days if its driver is unable to produce a valid driver's license, except as specified.

~~The bill would authorize, require a vehicle removed pursuant to the provisions of the bill to be released to the registered owner of the vehicle, or the registered owner's agent, to retrieve a vehicle impounded pursuant to a sobriety checkpoint program the following day as~~

specified, upon a showing of proof of a currently valid driver's license and vehicle registration.

Because this bill would expand the duties of local law enforcement officials and the scope of an existing DUI checkpoint program, this bill would impose a state-mandated local program. Because the failure to comply with these provisions would constitute an infraction under the Vehicle Code, the bill would also impose a state-mandated local program, by creating a new crime.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2814.1 of the Vehicle Code is amended
2 to read:

3 2814.1. (a) A board of supervisors of a county may, by
4 ordinance, establish, on highways under its jurisdiction, a vehicle
5 inspection checkpoint program to check for violations of Sections
6 27153 and 27153.5. The program shall be conducted by the local
7 agency or department with the primary responsibility for traffic
8 law enforcement.

9 (b) A driver of a motor vehicle shall stop and submit to an
10 inspection conducted under subdivision (a) when signs and displays
11 are posted requiring that stop.

12 (c) A county that elects to conduct the program described under
13 subdivision (a) may fund that program through fine proceeds
14 deposited with the county under Section 1463.15 of the Penal
15 Code.

16 SEC. 2. Section 2814.2 is added to the Vehicle Code, to read:

17 2814.2. (a) ~~The Department of the California Highway Patrol~~
18 ~~may, and the governing body of a city, county, or city and county~~

1 ~~may adopt an ordinance or resolution to, establish, on highways~~
2 ~~under its jurisdiction, a sobriety checkpoint program to identify~~
3 ~~drivers who are in violation of Section 23140 or 23152. The~~
4 ~~program shall be conducted by the local governmental agency or~~
5 ~~department with the primary responsibility for traffic law~~
6 ~~enforcement.~~

7 ~~(b) A driver of a motor vehicle shall stop and submit to an~~
8 ~~inspection conducted under subdivision (a) a sobriety checkpoint~~
9 ~~inspection conducted by a law enforcement agency when signs~~
10 ~~and displays are posted requiring that stop.~~

11 ~~(e)~~
12 ~~(b) Notwithstanding Section 14602.6, Section 14607.6, or~~
13 ~~subdivision (p) of Section 22651 or 14607.6, a peace officer or~~
14 ~~any other authorized person shall not cause the impoundment of~~
15 ~~a vehicle at a sobriety checkpoint established pursuant to this~~
16 ~~section or any other law, unless at least one of the following~~
17 ~~applies:~~

18 ~~(1) The driver of the vehicle is suspected of driving in violation~~
19 ~~of Section 14601, 14601.2, 14601.3, 14601.5, 23140, or 23152.~~

20 ~~(2) The vehicle is subject to impoundment pursuant to Section~~
21 ~~14602.7.~~

22 ~~(3) There is probable cause to believe that the vehicle was used~~
23 ~~as the means of committing a public offense, other than a violation~~
24 ~~of Section 12500 or 14604.~~

25 ~~(4) There is probable cause to believe that the vehicle is itself~~
26 ~~evidence that tends to show that a crime has been committed or~~
27 ~~that the vehicle contains evidence, that cannot readily be removed,~~
28 ~~that tends to show that a crime has been committed, other than a~~
29 ~~violation of Section 12500 or 14604.~~

30 ~~(5) The driver of the vehicle is not driving with a valid driver's~~
31 ~~license and none of the following apply:~~

32 ~~(A) The driver is able to obtain a validly licensed driver to drive~~
33 ~~the vehicle.~~

34 ~~(B) (i) Notwithstanding Sections 12500 and 16020, the driver~~
35 ~~is able to park or remove the vehicle in a manner that does not~~
36 ~~impede traffic or threaten public safety until a validly licensed~~
37 ~~driver can retrieve the car or until the checkpoint ends.~~

38 ~~(ii) The state or local governmental agency that established or~~
39 ~~conducted the checkpoint pursuant to subdivision (a) shall not be~~

1 liable for any claims related to the parking or removal of the vehicle
2 as described in clause (i):

3 (C) A peace officer, or a similarly authorized traffic enforcement
4 officer, is able to readily and lawfully remove the vehicle to a place
5 that does not impede traffic or threaten public safety.

6 (d) ~~This section does not authorize a combined sobriety~~
7 ~~checkpoint and vehicle inspection program. if the driver's only~~
8 ~~offense is a violation of Section 12500.~~

9 (c) *During the conduct of a sobriety checkpoint, if the law*
10 *enforcement officer encounters a driver who is in violation of*
11 *Section 12500, the law enforcement officer shall make a reasonable*
12 *attempt to identify the registered owner of the vehicle. If the*
13 *registered owner is present, or the officer is able to identify the*
14 *registered owner and obtain the registered owner's authorization*
15 *to release the motor vehicle to a licensed driver by the end of the*
16 *checkpoint, the vehicle shall be released to either the registered*
17 *owner of the vehicle if he or she is a licensed driver or to the*
18 *licensed driver authorized by the registered owner of the vehicle.*
19 *If a notice to appear is issued, the name and driver's license*
20 *number of the licensed driver to whom the vehicle was released*
21 *pursuant to this subdivision shall be listed on the officer's copy of*
22 *the notice to appear issued to the unlicensed driver. When a vehicle*
23 *cannot be released, the vehicle shall be removed pursuant to*
24 *subdivision (p) of Section 22651, whether a notice to appear has*
25 *been issued or not.*

26 ~~SEC. 4.~~

27 *SEC. 3. Section 14602 is added to the Vehicle Code, to read:*

28 ~~14602. Notwithstanding subdivision (p) of Section 22651, the~~
29 ~~registered owner of a vehicle impounded pursuant to Section~~
30 ~~2814.2, or the agent of the registered owner, may retrieve the~~
31 ~~vehicle the following day after impoundment upon a showing of~~
32 ~~proof of a currently valid driver's license and vehicle registration.~~

33 *14602. In accordance with subdivision (p) of Section 22651,*
34 *a vehicle removed pursuant to subdivision (c) of Section 2814.2*
35 *shall be released to the registered owner or his or her agent at*
36 *any time the facility to which the vehicle has been removed is open*
37 *upon presentation of the registered owner's or his or her agent's*
38 *currently valid driver's license to operate the vehicle and proof*
39 *of current vehicle registration.*

1 ~~SEC. 5.~~

2 *SEC. 4.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution for certain
4 costs that may be incurred by a local agency or school district
5 because, in that regard, this act creates a new crime or infraction,
6 eliminates a crime or infraction, or changes the penalty for a crime
7 or infraction, within the meaning of Section 17556 of the
8 Government Code, or changes the definition of a crime within the
9 meaning of Section 6 of Article XIII B of the California
10 Constitution.

11 However, if the Commission on State Mandates determines that
12 this act contains other costs mandated by the state, reimbursement
13 to local agencies and school districts for those costs shall be made
14 pursuant to Part 7 (commencing with Section 17500) of Division
15 4 of Title 2 of the Government Code.